IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/02/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION NO. 2824 OF 1998
AND
WMP.No: 12067 OF 1998

Christian Medical College
& Hospital,
Vellore ..Petitioner

-Vs-

1. The Deputy Commissioner of Labour (Appeals)
(Appellate Authority under Payment of Gratuity Act)
Chennai

2. A.I.Vijayakumar
3. M.Satyaseelan
4. N.S.Arjunan
5. NR.Alice
6. A.Glory
7. Mery Kosavai
8. Y.R.Jayaseelan
9. P.Krishnan
10.K.P.Selvaraj
11.C.Appar
12.D.Sundrarajan
13.G.Sampath
14.K.G.Paramanandam
15.C.Kanakaraj
16.P.Velayutham
17.S.Ganesan
18.David Sampathkumar ..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issue of a writ of certiorarified mandamus, as stated therein.

For petitioner:: Mr.John for
M/s.S.Ramasubramaniam
Associates

For respondents: Ms.V.Velumani AGP for R.1

:O R D E R

The petitioner, Christian Medical College and Hospital, Vellore has prayed for the issue of a writ of certiorari to call for the records connected with P.G.No.96/96 to 111/96 and 208 of 1996 on the file of the Controlling Authority under the Payment of Gratuity Act, and quash the order No.N.Dis.1.2.1346/98, dated 13.1.1998 made by the first respondent, Deputy Commissioner of Labour (Appeals) (Appellate Authority under the Payment of Gratuity Act, 1972) and further direct that the appeals of the petitioner be taken on file without insisting pre-deposit to be made.

2. Notice of motion was ordered during the year 1998. Heard Mr. John, learned counsel for M/s.s.Ramasubramaniam Associates, for the petitioner, Ms.V.Velumani, Additional Government Pleader for the first respondent and non appearing for the respondents 2 to 18.

3. By a common order passed by the Assistant Commissioner of Labour and Controlling Authority under the Payment of Gratuity Act, 1972 in P.G.No.96/96 to 111/96 and 208/96 dated 30th July 1997, the said authority directed the writ petitioner to pay gratuity to respondents 2 to 18 herein. The gratuity ordered to be paid to each of the employee ranges from Rs.2280 to Rs.9489/=. Thus different sums have been ordered to be paid depending upon the total number of years of service which the said respondents 2 to 18 have rendered.

4. As against the said orders of the Assistant Commissioner of Labour and Controlling Authority under The Payment of Gratuity Act, the writ petitioner preferred appeals before the first respondent herein. Those appeals were returned by the first respondent as the petitioner has not produced the pre deposit certificate from the Assistant Commissioner of Labour. The petitioner through its counsel represented the appeal papers with the objection that there is no legal requirement for the petitioner to deposit the amount as ordered by the Controlling authority as the very entitlement of the gratuity itself is questioned.

5. Once again by endorsement dated 13.1.1998, the first respondent while drawing the attention of the petitioner to Section 7(7) of the Payment of Graguity Act, overruled the submissions made by the petitioner and held that the appeals cannot be entertained unless predeposit of the amount directed to be paid by the Controlling Authority is deposited or a Certificate as prescribed by second proviso to Section 7(7) of the Payment of Gratuity Act is enclosed. Challenging the same, the present writ petition has been filed.

6. According to Mr.John, the learned counsel for the petitioner since the entire claim of the respondents 2 to 18 towards gratuity is disputed the petitioner is not liable to deposit the amount of gratuity directed to be paid. Mr.John contends that it is only the admitted sum which the petitioner has to deposit and not the amount, which is being disputed and challenged in the appeal.

7. In the present case, the only point that arise for consideration is:
Whether the petitioner is bound to comply with requirement to proviso to sub section (7)(2) of Section 7 of The Payment of Gratuity Act, 1972?

8. There is no factual controversy with respect to the presentation of the appeals. In State of Punjab Vs. Labour Court, reported in 19 80 (1) SCC page 4, the Apex Court held that the Payment of Gratuity Act is a complete Code containing detailed provisions covering all the essential features of a scheme for payment of gratuity and enforcement thereon. Section 7 of the Act provides for determination of the amount of gratuity. Sub section (4) of Section 7 provides for deposit or the admitted amount before the Controlling Authority by the employer in case of any dispute. The very same sub section also provides when there is dispute regarding the quantum of gratuity payable either the employer or employee may make an application to the Controlling Authority for deciding the dispute.

9. As against determination and direction issued by the Controlling Authority to pay gratuity, a remedy of appeal is provided under sub section (7) of Section 7. Such appeals have to be preferred within sixty days from the date of receipt of the order before the appellate authority specified by the appropriate Government. First proviso to Section 7 provides for condonation of delay if sufficient cause is shown by a further period of sixty days. Second proviso to sub section (7) of Section 7 provides that no appeal of an employer shall be admitted unless at the time of preferring appeal the appellant either produce the certificate of the Controlling Authority to the effect that the appelant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub section (4) or deposits with the appellate authority such amount. Therefore it is mandatory that the gratuity payable are directed to be paid in terms of sub section (4) of

Section 7 and a receipt or certificate has to be produced along with the appeal. There is no provision at all for waiver of such deposit and this shows the legislature intedment.

10. Admittedly in this case, no amount has been deposited by the writ petitioner either before the Controlling Authority or before the Appellate Authority. However, it was sought to be contended that the pre deposit is not required as the entire claim is disputed or denied. Such a contention cannot be countenanced. In terms of sub section (4) of Section 7 gratuity payable has to be deposited by the employer and he cannot move an application for determination. So also the employee could move the controlling authority for a direction to pay the quantum of gratuity payable to him. When once the Controlling Authority quantifies the amount of gratuity and direct the employer to pay the same, the said sum is the amount which is required to be deposited before preferring the appeal in terms of second proviso to sub Section (7) of Section 7.

11. The contention that it is only the admitted sum that alone is required to be deposited cannot be sustained as the second proviso to sub section (7) of Section 7 refers to whole of the sub section (4) of Section 7

and not clause (a) of sub section (4) of section 7. The contention advanced by Mr.John cannot be sustained and deserves to be rejected. The requirement to produce a pre deposit receipt or pre deposit certificate issued by the Controlling Authority or deposit to the Appellate Authority is a mandatory requirement as stipulated by the statutory provision and the same cannot be dispensed with. If the interpretation sought to be advanced by the learned counsel for the petitioner is to be countenanced, it would amount to rewriting the very statutory provisions.

12. Merely because the petitioner has disputed the claim of the workmen it cannot be contended that the petitioner is not liable to make a pre deposit and get a certificate. In Onward Trading Company Vs. Deputy Commissioner of Labour, Madras reported in 1989 (2) LLN 6 72 it has been held that the provision is mandatory and deposit has to be made in cash while holding that it is impermissible even to furnish bank guarantee.

13. The contention advanced by Mr.John, learned counsel cannot be countenanced and therefore the writ petition deserves to be dismissed. In the circumstances, the writ petition is dismissed. However this court directs that the petitioner may deposit the quantum of gratuity as directed by the Controlling Authority in favour of respondents 2 to 18, within six weeks from the date of this order and if such deposit is made with the first respondent-appellate authority may consider the admission of the appeal and hear it on merits.

14. If the petitioner fails to deposit the sum already ordered within the period of six weeks from today, the petitioner shall forfeit the right of appeal as for the past five years the gratuity amount has not been deposited by the petitioner which has cause serious prejudice to the contesting respondents 2 to 18. This direction is given to render substantial justice and to see that the gratuity amount is deposited with the Controlling Authority or the Appellate Authority, as the case may be.
15. Consequently, connected WMP is closed. No costs.

Internet: Yes
Index: Yes
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Copy to:-
1. The Deputy Commissioner of Labour (Appeals)
(Appellate Authority under Payment of Gratuity Act)
Chennai